

***IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.***

CWP No.29837 of 2018

Date of Decision: 11.07.2019

Guru Nanak Dev Charitable Trust (Regd.)
through Smt. Tejinder Kaur D/o Sh. Ranjit Singh,
Principal, Sri Guru Nanak Dev Homoeopathic
Medical College & Hospital, Canal Road Barewal,
Ludhiana – 141 012
....Petitioner

Versus

Union of India and others
....Respondents

CWP No.7 of 2019

Babe Ke Ayurvedic Medical College & Hospital,
Village and Post Office Daudhar, Tehsil and
District Moga Punjab through its Principal
Dr. Ish Sharma
....Petitioner

Versus

Union of India and others
....Respondents

***CORAM :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL***

Present:- Mr. Dinesh Kumar, Advocate
for the petitioner
in ***CWP No.29837 of 2018.***

Mr. Rajiv Atma Ram, Sr. Advocate
with Mr. Arjun Partap Atma Ram, Advocate
for the petitioner
in ***CWP No.7 of 2019.***

Mr. Arun Gosain, Advocate
for respondent No.1-UOI.

Mr. R. Kartikeya, Advocate
for respondents No.2 and 3.

Ms. Manpreet Ghumman, Advocate
for Mr. Prateek Mahajan, Advocate
for respondent No.3 in ***CWP No.29837 of 2018***.

DAYA CHAUDHARY, J.

By this order, we dispose of above two petitions bearing ***CWP No.29837 of 2018*** and ***CWP No.7 of 2019*** as common question of law and facts are involved. However, for the sake of convenience, the facts are being derived from ***CWP No.29837 of 2018***.

The controversy in the present case relates to the eligibility condition prescribed for BHMS and BAMS as provided in part III of the Regulations, where under clause of 'Eligibility criteria', it is provided that no candidate is to be admitted to B.H.M.S Degree Course unless he/she has passed the higher secondary examination or the Indian School Certificate Examination which is equivalent to 10+2 Higher Secondary Examination after a period of twelve years study, the last two years of study comprising of Physics, Chemistry, Biology with Mathematics or any other elective subjects with English at a level not less than core course of English as prescribed by the National Council of Educational Research and Training after the introduction of the 10+2+3 years educational structure as recommended by the National committee on Education.

Learned senior counsel for the petitioner in ***CWP No.7 of 2019*** submits that the controversy in the case, in hand, is squarely covered by decision in ***CWP No.28442 of 2018*** titled as ***J.R. Kissan, Homoeopathic Medical College & Hospital, Rohtak vs Union of India and others*** decided on ***24.01.2019*** as well as judgment of Hon'ble the Apex Court in case ***Association of Managements of Homeopathic Medical Colleges of Maharashtra vs Union of India (UOI) and ors. (Civil Appeal No.1393 of***

2019 arising out of S.L.P (Civil) No.766 of 2019 and other connected matters. Learned senior counsel also submits that in view of the precedents of Hon'ble Patna High Court and Hon'ble Rajasthan High Court, the respondents were directed to issue an advertisement regarding counselling for grant of admission in BAMS, BHMS, BUMS and BNYS courses with the stipulation that those fulfilling the eligibility conditions other than NEET, would be eligible for grant of admission and by counselling the candidates alongwith the pre-scheduled counselling which was underway. It was also directed that while holding the counselling and granting admissions to such students including the students who did not clear NEET, the preference would be given to candidates, who have the NEET eligibility. The students without NEET eligibility, who are granted admission, a specific stipulation be indicated that the same would be subject to final outcome of the writ petition. Learned senior counsel also submits that the respondents have proceeded further to redefine the eligibility criteria for admission to Homeopathy course by introducing AIA-PGET examination on the basis of admission to MD (Homeopathy) course instead of the eligibility prescribed under the Act and the Regulations framed thereunder.

Learned counsel for the respondents have not disputed the ratio of judgment passed by Division Bench of this Court in **J.R. Kissan's** case (Supra) as well as judgment of Hon'ble the Apex Court in **Association of Managements of Homeopathic Medical Colleges of Maharashtra's** case (supra).

The judgment passed by Division Bench of this Court in **J.R. Kissan's** case (supra) is reproduced as under :-

“ *By this order we will dispose of above said two petitions bearing Nos.CWP-28442-2018 and CWP-28729-*

2018. Since common questions of law and facts are involved so these writ petitions are being decided by this common order.

The point in controversy raised before us is the eligibility condition prescribed for BHMS and BAMS provided in part III of the Regulations, the relevant of which is extracted herein below:-

“4. Eligibility criteria.- (i) No candidate shall be admitted to B.H.M.S. Degree Course unless he has passed-

(a) the higher secondary examination or the Indian School Certificate Examination which is equivalent to 10+2 Higher Secondary Examination after a period of twelve years study, the last two years of study comprising of Physics, Chemistry, Biology with Mathematics or any other elective subjects with English at a level not less than core course of English as prescribed by the National Council of Educational Research and Training after the introduction of the 10+2+3 years educational structure as recommended by the National committee on Education.”

The grievance centers around the directives issued by the Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy (AYUSH) prescribing National Eligibility-cum-Entrance Test (NEET) as an essential condition to seek admission in the course for the academic year 2018-19. The relevant directive is extracted herein below:-

“In the process of streamlining the admissions and to bring meritorious students to the AYUSH systems of medicine in the country, the Ministry vide letter number R-13040/33/2016-HD(Tech) Part dated 26.4.2017 (copy enclosed)-had requested all the State Governments to admit students in AYUSH under Graduate Courses from A.Y. 2018-19 through the merit list of National Eligibility-cum-Entrance Test (NEET) only. Therefore, it has been once again informed that from Academic Year 2018-19 all UG seats of AYUSH Degrees namely,

BAMS, BHMS, BUMS, BSMS and BNYS shall be filled by considering the merit list of National Eligibility-cum-Entrance Test (NEET) only.”

Learned counsel for the petitioners contend that such a directive is contrary to the Regulations prescribed for the courses in question. Learned counsel for respondent No.1-Union of India has referred to the instructions wherein, in clause 12 it has been stated that the result of NEET (UG) may be utilised by other entities of Central/State Government for admission purposes in accordance with their rules. We are of the opinion that the stand of the respondents is totally unjustified. Unless they amend the Regulations they cannot insist on NEET being an essential qualification for admission in said courses. Even if the stand of the respondents is appreciated, it only gives a direction that the result of NEET for Under Graduate Course may be utilised by other stake holders. We would be one with the respondents, that it may be desirable to have a fair selection from the students who have completed in NEET and occasioned a merit but are unable to be absorbed in the MBBS and BDS courses and such human resource may be desirous of pursuing the courses such as BAMS and BHMS but for the purpose they should have left the issue open to the Colleges and Universities rather than issuing a mandate. As things stand today the insistence on admission from students who have completed in NEET alone cannot be sustained. Indeed they can also be considered.

The writ petitions are allowed.

We, however, make it clear that if admissions have been made from amongst the students of NEET it would not nullify their admission.”

Accordingly, both petitions bearing **CWP No.29837 of 2018** and **CWP No.7 of 2019** are allowed in the same terms as allowed by Division Bench of this Court in **J.R. Kissan’s** case (supra). However, the respondents are directed to consider the cases of the petitioners in terms of

order passed in **CWP No.28442 of 2018** as well as in view of ratio of judgment of Hon’ble the Apex Court in **Civil Appeal No.1393 of 2019 (Arising out of S.L.P. (Civil) No.766 of 2019)**.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

11.07.2019
gurpreet

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No